IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7721 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABA RAMDEV PASTI BHANDAR THROPARTNERS - Petitioner(s)
Versus
GABHABHAI AMARABHAI PARMAR - Respondent(s)

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Appearance :
MR KUNAL S SHAH for Petitioner(s) : 1,
MR MS TRIVEDI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 23/08/2007

ORAL JUDGMENT

1. Shri Kunal S.Shah,learned counsel for the petitioner; Shri M.S. Trivedi,learned counsel for the

respondent.

2. The petitioner, being aggrieved by the order dated 25.5.2000 passed by the learned Labour Court No. 7 at Ahmedabad in Recovery Application No. 1091/94 requiring the petitioner to pay a sum of Rs. 1,22,826/- with 12% interest and cost of Rs. 2500/-, is before this Court under Article 227 of the Constitution of India,with a submission that the award is patently bad.

3. The short facts necessary for disposal of the present matter are that the respondent Gabhabhai Amarbhai Parmar filed a Recovery Application under Section 33C[2] of the Industrial Disputes Act, submitting, inter alia, that he was employed by the present petitioner-employer on consolidated annual salary of Rs.700/-. This I am recording from the statement of Gabhabhai Amarbhai, which is available at Exh.8 and has been filed before this Court at Annexure:B. He submitted that he was terminated from services with effect from 1.1.92; no weekly holidays were offered to him and under that count, he was

entitled to a sum of Rs. 25,168/- and a sum of Rs. 79,200/- was required to be recovered towards overtime. Other claims were also made.

4. The petitioner appeared before the lower court and submitted that there were no relations of master and servant or employer and employee; the present respondent was never engaged as employee; the petitioner was not keeping any employee as they were dealing in trash; certain persons who were picking up trash were supplying the same at their shop and after collecting th said articles, payments were made to the said pickers. As the parties joined the issue, the learned Court below, even under Section 33C[2] of the Act started making an inquiry into the relationship of master and servant. The applicant-petitioner Gabhabhai Amarbhai was examined and he stated that he was working as a Helper in the firm at the annual salary of Rs.700/-; he was to assort good papers and was to do miscellaneous work which the master had assigned to him. He also produced an Identity Card, wherein, a mention was made that the workman was working with Mafabhai in his shop.

Barring this, he did not lead any further evidence. The present petitioner examined one Paras, son of Maganji Prajapati who stated before the Court that he was son of Maganji Prajapati who happened to be a partner in the petitioner firm. He also stated that there was no relationship of master and servant. In the cross-examination, he stated that he was personally knowing the present respondent. The present petitioner also examined one Jayantibhai Danabhai who was working with a company having its office in front of the shop in dispute. The said Jayantibhai stated before the Court that the petitioner firm was purchasing trash/rubbish, they were not engaging any labour or workman. He also stated that he knew Gabhabhai Amarbhai; that he was residing near his house; the workman had not worked with the petitioner. In the cross-examination, he stated that he had seen Gabhabhai Amarbhai coming to the firm to sell the goods. He also stated that he was not related to Mafabhai. After hearing the parties, the learned Court below held that the documentary evidence produced by the workman was not rebutted and no precedence to the oral evidence led

by the employer could be given; it also recorded that Paras Maganji Prajapati admitted in the cross-examination that he did not know the workman, the Court ultimately directed that the applicant [respondent] would be entitled to a sum of Rs. 1,22,826/- with 12% interest on it, and cost of Rs.2500/-.

5. Being aggrieved by the said order passed in the Recovery Application, the petitioner-employer is before this Court. Shri Shah, learned counsel for the petitioner, after taking me through the oral evidence and the findings recorded by the learned Court below submitted that the findings recorded by the Court below are perverse; those are contrary to the records; the Court below has read something which is not in the records and has refused to read what is available in the records. He submitted that for granting claim of Rs.1,22,826/- the Court below has not given any reasons though claim was based on the grounds that the claimant was entitled to encashment of the weekly holidays, overtime and annual privileged leave, medical leave, festival holidays

and bonus. He submitted that the award being patently illegal, deserves to be quashed.

6. Shri M.S. Trivedi, learned counsel for the respondent-workman, on the other hand, submitted that the Court below was not unjustified in recording he findings in favour of the present respondent. He submitted that from the Identity Card – exh.7.5, it would clearly appear that the workman was engaged in the shop of Mafabhai. He also submitted that the Court below, after considering the evidence led by the parties if has recorded a finding of fact, the finding may not be disturbed under Article 227 of the Constitution of India.

7. True it is that the High Court in its jurisdiction under Article 227 of the Constitution exercises powers of superintendence or at best powers of a revisional court then ordinarily, the High Court in exercise of its powers under Article 227 of the Constitution would not interfere with the findings of fact if some evidence is available on the record to support the findings. The High Court would assume

jurisdiction to interfere with the findings recorded by the subordinate court if the findings are shown to be perverse, meaning that the Court below has read something which is not available on the records or has refused to read something which is available on the records or the findings are patently absurd and illegal and no prudent man who has some knowledge of law can record such finding.

8. As Shri Shah has submitted that the findings are perverse, I would look into the findings.

9. The Court below has observed that the document at exh.7.5 is the Identity Card which records that the workman was working in the paper shop of Mafabhai. On this basis, the Court below has observed that the document would clinchingly prove that the workman was working in the shop of Mafabhai. The Court below has also observed that against the documents produced by the applicant-workman, no rebuttal evidence was produced by the employer.

10. The observations made by the learned Court

below, in the considered opinion of this Court are patently illegal. Exh.7.5 is not an Identity Card issued by the employer. It appears that the Court below got little confused in not appreciating distinction between the employer Baba Ramdev Pasti Bhandar and a society which had issued Identity Card, namely, Baba Ramdev Pir Ekta Mandal. From the very name, it would clearly appear that “Baba Ramdev Pir Ekta Mandal” is some society, association or group of persons. If such body issues an Identity Card to its member and the said Identity Card contains certain informations or details about the workman, then, such informations or details as given in the Identity Card would not bind a third party. It is to be presumed that such informations must have been fed by the person who obtained the Identity Card. One cannot be allowed to rely upon *ipsi dixit* nor one can be allowed to say that statement made by him to a third party would be binding against the interest of some other person. Barring that Identity Card, no other documentary evidence has been produced on the record. I am shocked and surprised to see that the the Identity Card issued by some society to its

member is taken to be documentary evidence and on basis of such documentary evidence, the Court below holds that the relationship of employer and employee stands established, specially in view of the fact that no rebuttal evidence was produced by the employer. Rebuttal evidence is required in a case where evidence produced by one party is reliable, has a binding effect and can persuade the Court to record a particular finding. If the evidence produced by a particular party does not bind the interest of the other party, then, such other party is not required to lead any rebuttal evidence, because, against the interest of such other party, evidence led by the first party would not be binding.

11. The Court below, while discussing the evidence of Paras Maganji Prajapati has observed that in the cross-examination, the witness admitted that he had no information about the applicant. Unfortunately, this again is a misstatement based upon the misreading of the evidence. Statements of Paras Maganji Prajapati are available in the original records at exh.19 and have been produced before this

Court. In the cross-examination, he had stated; “I have personal knowledge about the concerned workman. The concerned workman has not done service in the company.” If this was the statement in the cross-examination, then, the Court below had no jurisdiction to hold that Paras Maganji had admitted in the cross-examination that he had no personal information about the applicant. The Court below has disbelieved the statement for further reason that the witness being son of Maganji Prajapati, partner of the shop was interested witness. I am sorry to record that the learned Court below, for the reasons best known to it and to provide an order in favour of the claimant has misread the evidence and has recorded perverse findings. The Court below has also considered the statements of Jayantibhai Danabhai [exh. 32] and has observed that the said man did not know anything about the workman. The said witness Jayantibhai is having his shop just in front of the shop of the petitioner. He had clearly stated that the trash etc. collected by the pickers was brought to the shop and the firm was making cash payment to the suppliers of the trash. He also stated that the

petitioner was not making any payment of salary to the claimant; that the claimant was coming to the shop of the petitioner for selling the trash and that the he was working with the gas company. The Court below has refused to rely upon the witness simply on the ground that he has not produced his appointment letter. The witness had clearly stated that he had a copy of the appointment letter and he was ready to produce it. Learned counsel cross-examining the witness left the question then and there but did not compel the witness to produce the letter. If under the circumstances and without knowing that he would be asked to produce the appointment letter, was unable to produce the appointment letter, no adverse inference could be drawn on the ground of non-production of the letter, specially when it is stated in the cross-examination that it was untrue that the witness was not working in the gas office.

12. It is also to be seen from the order that the Court below has observed that the workman was working with the the opponent [present petitioner] and during his period of service, that is, for 11

years, he was not paid legal dues to which he was entitled. Unfortunately, the Court did not look into the claim put forward by the workman. At one point of time, the workman said that he was not paid his salary but at the same time, he started saying that he was entitled to leave encashment, bonus and other benefits. If there were different claims and the workman was changing his stand and stance now and then, then, the Court below was required to see that to what amount, the claimant was entitled.

13. The findings recorded by the learned Court below are patently illegal and perverse. In my jurisdiction under Article 227 of the Constitution, I must hold that the findings recorded by the learned Court below are not binding upon this Court.

14. For the reasons and the discussion aforesaid, I quash all the findings recorded by the learned Court below and hold that the workman has failed in proving his case.

15. The petition deserves to and is accordingly

allowed. Rule is made absolute. At the request of Mr. Trivedi, I impose no cost.

[R.S. GARG, J.]

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